

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Carney, Michigan))

MM Docket No. 99-334

RM-9772

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF LAKES RADIO, INC.

Lakes Radio, Inc. ("Lakes Radio"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking (the "NPRM") in the above-captioned proceeding.¹ Specifically, Lakes Radio opposes the petition of Escanaba License Corp. ("Escanaba") to allot Channel 260A to Carney, Michigan. As demonstrated herein, the Petition for Rule Making filed by Escanaba is defective insofar as it has specified a community of license that does not qualify as a community for allotment purposes. As a result, the Commission should dismiss Escanaba's proposal to allot Channel 260A to Carney, Michigan.

To qualify as a community for allotment purposes, the Commission requires that such community comprise a "geographically identifiable population grouping."² This requirement is generally presumed if a proposed community is incorporated or listed as a census designated

¹The Notice of Proposed Rulemaking ("NPRM") was released on November 22, 1999. See DA 99-2582. Comments in response to the NPRM are to be filed on or before January 13, 2000. Therefore, these comments are timely filed.

² Revision of FM Channel Policies/Procedures, 90 FCC 2d 88, 101, 51 RR 2d 807, 816 (1982).

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place.³ This presumption can be rebutted, however, where, as here, the “community” lacks the requisite political, commercial, social and religious organizations and services of a bona fide community.⁴ While Carney is both incorporated and listed in the U.S. Census,⁵ it does not possess the other requisite indicia of a community upon which the Commission traditionally relies when determining whether an area is a community for allotment purposes. As the Commission accurately points out in the NPRM, Escanaba failed to provide the names and addresses of local representatives, major business, social or civic organizations, parks, churches and libraries, and did not provide evidence that rural residents view Carney as a center for shopping and medical services.⁶ This is largely because the majority of these important indicia of a community do not exist in Carney.

In support of this contention, Lakes Radio submits the Declaration of Jeff Gerber, the Network Technical Director of Radio Results Network of Escanaba, Michigan, located about 30 miles from the “village” of Carney.⁷ As an eighteen year native of Escanaba, Mr. Gerber has

³ Id.

⁴ See New South Broadcasting Corporation v. FCC, 879 F.2d 867 (D.C. Circuit 1989); Reeder v. FCC, 865 RR 2d 1298 (1989).

⁵ According to the United States Census, Carney had a population of 197 in 1990 and a population of 236 residents in 1980. These figures indicate that the population in Carney is actually decreasing in size. The Census figures also show that Carney had only 77 households in 1990.

⁶ See NPRM at 2.

⁷ See Attachment 1, Declaration of Jeff Gerber, Network Technical Director of Radio Results Network.

first-hand knowledge of the areas surrounding Escanaba, including Carney.⁸ In his Declaration, Mr. Gerber details the results of his visits to Carney which demonstrate that many of the contentions made by Escanaba in its petition regarding the status of the area are inaccurate. Furthermore, Mr. Gerber's observations indicate that Carney is not a community for allotment purposes and therefore, should not be granted an FM allotment.⁹

Specifically, Carney has a very limited business community which consists only of several small businesses including a propane gas and fuel oil dealer, a convenience store, a beauty shop, a small engine repair shop and two wood products manufacturers.¹⁰ As a result, the residents of Carney must rely on the locations of Menominee, Escanaba and Iron Mountain as their primary shopping and professional service areas. In other words, Carney's residents must travel to other communities for basic needs such as groceries, clothing, gasoline, pharmaceuticals and medical care. Furthermore, the nature and size of the few commercial entities actually in Carney make it unlikely that these establishments would or could advertise on the radio. Based on the lack of commercial entities in the area, it is clear that Carney is incapable of establishing its own advertising market and should not be allotted Channel 260A. Furthermore, Carney also lacks social organizations. There are no civic organizations such as the Lions Club, and no economic development organizations such as a Chamber of Commerce.

⁸ Id.

⁹ Id.

¹⁰ Id.

In addition, Mr. Gerber also discovered that Carney does not provide municipally owned electric, telephone, cable or sewer services.¹¹ Furthermore, Carney does not have any shopping centers, newspapers, or a police department. The “community government” does not even levy taxes. In fact, Carney does not even have an independent public library. Moreover, it also does not have independent local fire protection, water service, public school, ambulance or medical services. For example, fire protection for Carney is provided by the Nadeau Township Volunteer Fire Department, located in the neighboring township of Nadeau. The only public school for students in the area is the combined Carney-Nadeau Public School, which totals less than 250 students for all grade levels K-12. In the event of a medical emergency, residents of Carney must rely on Mid-County Ambulance Service in Stephenson, Michigan, approximately 12 miles from Carney, and the typical emergency case normally would be transported roughly 33 miles to the Bay Area Medical Center in Marinette, Wisconsin. As a result of its lack of independent municipal services, Carney fails by a wide margin to meet the Commission’s criteria for qualification as a community.

All broadcast applicants are required by Section 307(b) of the Communications Act of 1934 to apply for a specific community to which proposed facilities are to be licensed.¹² Escanaba has failed to do so. As demonstrated above, Carney does not possess the requisite “social, economic and cultural components that are commonly associated with community

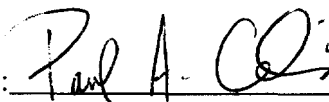
¹¹ Id.

¹² See Jupiter Associates, Inc. v. FCC, 420 F2d 108, 112-113 (D.C. Circuit 1969).

service preference.¹⁴ For these reasons, Lakes Radio respectfully urges the Commission to deny Escanaba's petition to allot Channel 260A to Carney.

Respectfully submitted,

LAKES RADIO, INC.

By: 

David D. Oxenford
Dawn M. Sciarrino
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Its Attorneys

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Dated: January 13, 1999

¹⁴ In fact, Carney is already well-served by the allocation of five radio stations. See Attachment 2. See also Chehalis, Washington and Tillamook, Oregon, 1998 FCC LEXIS 5316 (1998) In Chehalis, the Commission considered the communities of Chehalis, Washington, with a population of 6,527, and Tillamook, Oregon, with a population of 4,001 to be well-served as both communities had at least five full-time reception services. As mentioned above, the 1990 census indicates that Carney has only 197 residents, far fewer than the well-served communities of Chehalis and Tillamook.


CERTIFICATE OF SERVICE

I, Nora L. Luersen, do hereby certify that I have this 13th day of January, 2000 mailed by first class United States mail, postage prepaid, a copy of the foregoing "Comments" to the following:

*John A. Karousos, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A320
Washington, DC 20554

Denise B. Moline
Putbrese, Hunsaker & Trent
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Nora L. Luersen

*Hand delivered.

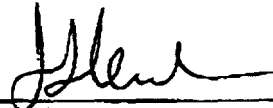
DECLARATION OF JEFF GERBER

I, Jeff Gerber, Network Technical Director of Radio Results Network, hereby state the following:

1. I am an eighteen year resident of Escanaba, Michigan and am familiar with the community of Escanaba and neighboring communities, including Carney, Michigan.
2. I have traveled to and spent time in Carney on more than one occasion recently.
3. Carney is an area that encompasses approximately 1.0 square mile and is located approximately 30 miles southwest of Escanaba. It has a population of about 250 people.
4. Carney has less than ten small businesses, which includes a propane gas and fuel oil dealer, a convenience store, a beauty shop, a small engine repair shop and two wood products manufacturers. The residents of Carney rely on the locations of Menominee, Escanaba and Iron Mountain as their primary shopping and professional service areas.
5. Based on discussion with a lifelong Carney resident, I learned that Carney does not provide municipally owned electric, telephone, cable or sewer services. It does not have a shopping center, police department or independent library. Carney also does not have independent local fire protection, water service, public school, ambulance or medical services. In the event of a medical emergency, residents of Carney must rely on Mid-County Ambulance Service in Stephenson, Michigan, approximately 12 miles from Carney, and the typical emergency case normally would be transported roughly 33 miles to the Bay Area Medical Center in Marinette, Wisconsin. The only public school in the area is the Carney-Nadeau Public School which includes children from both Carney and Nadeau. The school is small and enrolls less than 250 students for levels K-12 combined. In addition, Carney does not have its own local newspaper and instead relies on the Eagle Herald of Marinette, Wisconsin and Menominee, Michigan for news. Carney also levies no taxes on its residents and instead derives income solely from revenue sharing from the State of Michigan.
6. I have read the attached Comments of Lakes Radio, Inc. and the facts stated therein are true and correct to the best of my of knowledge and belief.

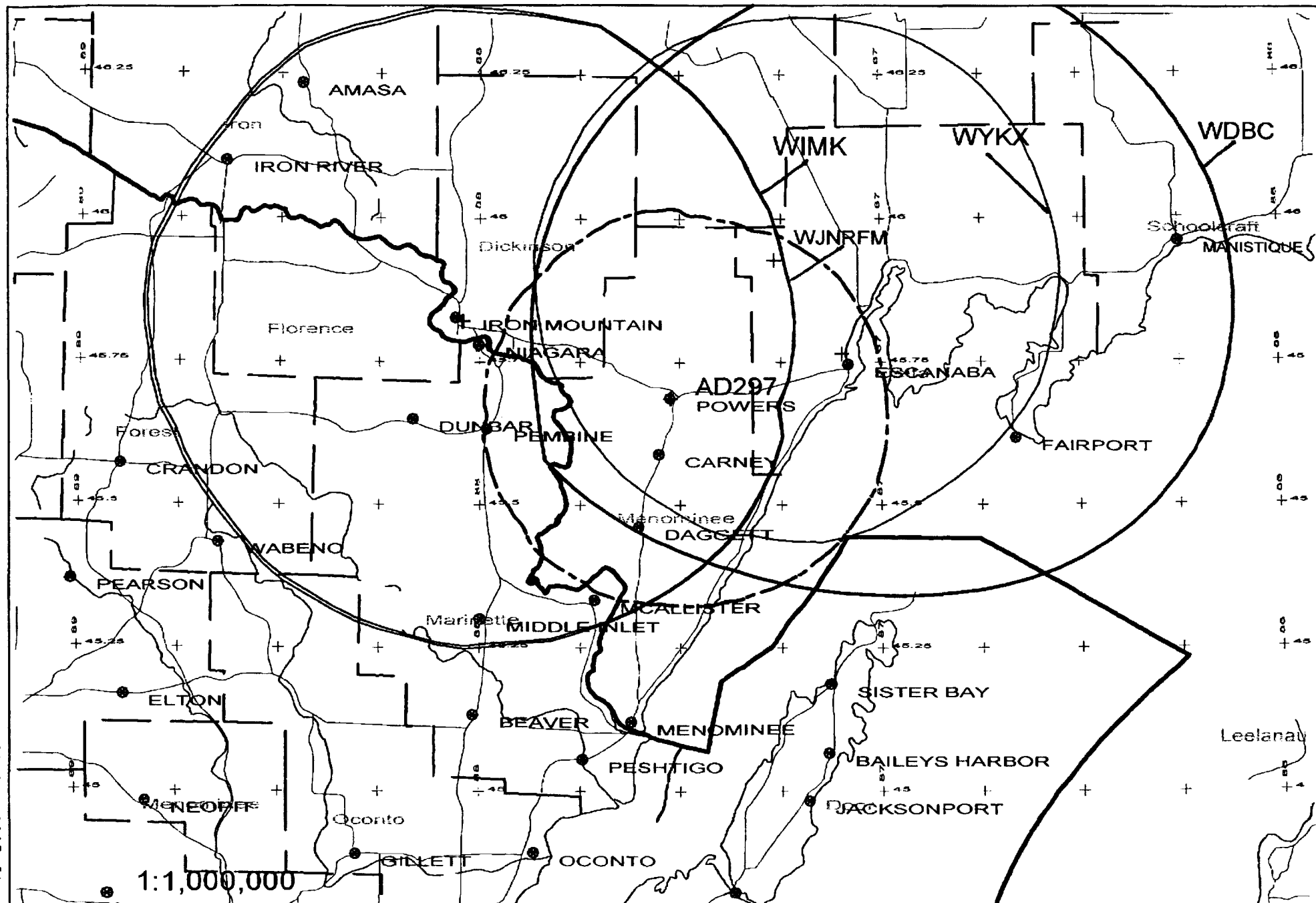
I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted,



Jeff Gerber
Network Technical Director
Radio Results Network

Dated: January 13, 2000



Area AM & FM Stations with Service Contour
Overlap of Carney, MI

Carney 60 dBu Signals
Geo Nicholas - 01/00